STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 3, 2009
v	No. 279073 Oakland Circuit Court
SALATHIEL REZAR BROWN, Defendant-Appellant.	LC No. 2006-209679-FH

Before: Cavanagh, P.J., and Jansen and Meter, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by a jury of third-degree fleeing and eluding a police officer, MCL 750.479a(1) and (3). Defendant was sentenced to 1½ to 15 years in prison. We affirm. This case has been decided without oral argument pursuant to MCR 7.214 (E).

Defendant argues on appeal that because the prosecution failed to submit the videotape from Officer Taylor's patrol vehicle into evidence, there was insufficient evidence to support a verdict of third-degree fleeing and eluding a police officer. We disagree.

A challenge to the sufficiency of the evidence is reviewed de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). "[A] court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Nevertheless, "[t]his Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. . . . Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime." *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007).

The statute under which defendant was charged, MCL 750.479a, provides, in part:

> (1) A driver of a motor vehicle who is given by hand, voice, emergency light, or siren a visual or audible signal by a police . . . officer, acting in the lawful performance of his or her duty, directing the driver to bring his or her motor vehicle to a stop shall not willfully fail to obey that direction by increasing the speed of the vehicle, extinguishing the lights of the vehicle, or otherwise

> attempting to flee or elude the police . . . officer. This subsection does not apply unless the police . . . officer giving the signal is in uniform and the officer's vehicle is identified as an official police vehicle.
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> (3) . . . [A]n individual who violates subsection (1) is guilty of third-degree fleeing and eluding, a felony punishable by imprisonment for not more than 5 years or a fine of not more than $5,000.00, or both, if 1 or more of the following circumstances apply:
>
> (a) The violation results in a collision or accident.
>
> (b) A portion of the violation occurred in an area where the speed limit is 35 miles an hour or less, whether that speed limit is posted or imposed as a matter of law.

The terms "flee" and "elude" "connote an intent to take affirmative action, not simply fail to submit." *People v Grayer*, 235 Mich App 737, 741; 599 NW2d 527 (1999). Moreover, there is

> no requirement that the defendant's speeding exceed a certain level or that the speeding occur over a long distance in order for the elements of the statute to be met. The elements do, however, require the prosecution to demonstrate that the defendant refused to obey by trying to flee or avoid capture, which . . . necessitates a finding of some intent on the part of the defendant to flee or avoid capture. [*Id*. at 741-742.]

The testimony presented at trial by both Taylor and defendant makes it clear that Taylor was in uniform and driving a fully marked Southfield Police Department vehicle at the time he first attempted to pull over defendant's car on M-10 by flashing his lights. Defendant's testimony further indicates that he had the requisite intent to flee and elude – he felt that Taylor was following him too closely so he did not want to stop. Defendant went so far as to put his hand out of his car window to signal the officer to "get off my bumper so I can stop."

Despite his displeasure with Taylor's actions, defendant claimed that he eventually did stop his car on the Northland exit, but that Taylor stopped his patrol vehicle in a lane of traffic and jumped out with his gun drawn. In defendant's mind, these actions by Taylor provided justification for him to leave the scene. Taylor, on the other hand, denied getting out of his vehicle or pointing a gun at defendant. Moreover, defendant has presented no evidence or legal argument establishing that even if Taylor did draw his weapon, such action justified defendant's fleeing and eluding. The prosecution countered with evidence that if Taylor conducted a traffic stop in this manner, this would have created a traffic hazard and would be a violation of department protocol that could have resulted in Taylor's discipline. The prosecution's point, of course, was that Taylor, a veteran police officer, surely would not have conducted a traffic stop

in such an inappropriate way. At any rate, it was the province of the jury to weigh the credibility of such testimony.

Taylor and defendant also both agreed that after this first attempted stop, a chase ensued, at which point Taylor turned on his siren. Defendant and Taylor further agree that Taylor then moved his patrol vehicle alongside of defendant's car and gave him a verbal direction to pull over. Instead of pulling over, defendant – according to testimony from Taylor and Sergeant Porter – swerved his vehicle toward Taylor. Taylor reacted by slamming his patrol vehicle into defendant's car, which Porter, a supervisor, termed a "reasonable decision" in light of what he characterized as "an act of aggression" by defendant. Defendant denied intentionally swerving toward Taylor's patrol car. It was the province of the jury to weigh the credibility of the testimony, and, at any rate, the end result was a collision, which violates MCL 750.479a(3)(b).

The prosecution provided still more evidence of defendant's fleeing and eluding. After the collision, defendant continued traveling down the M-10 freeway, pursued by other police vehicles that had been called for backup. Defendant agreed that he did indeed take such action, despite his assertion that he was willing to stop for other officers, whom he admitted that he could see in the distance. Moreover, when defendant finally did stop, he got out of his vehicle and ran. Therefore, even if, as argued by defendant, the missing videotape showed Taylor threatening defendant with a gun and this somehow excused defendant from having to stop initially for Taylor, there was still sufficient evidence for a rational jury to find beyond a reasonable doubt that defendant caused a collision, sped through a residential neighborhood (where the speed limit is under 35), and fled from several other officers in violation of MCL 750.479a(1) and (3).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Patrick M. Meter